

OPEN MEETING ITEM

COMMISSIONERS
BOB STUMP – Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH



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ARIZONA CORPORATION COMMISSION RECEIVED
AZ CORP COMMISSION
DOCKET CONTROL

DATE: OCTOBER 20, 2014

2014 OCT 20 PM 1 26

DOCKET NO.: S-20844A-12-0122

TO ALL PARTIES:

ORIGINAL

Enclosed please find the recommendation of Administrative Law Judge Mark Preny. The recommendation has been filed in the form of an Opinion and Order on:

SEED CORPORATION, RANDALL DUANE SIMONSON AND
MARILYN J. SIMONSON, AND KARL HENRY REHBERG AKA SHAWN PIERCE
AND HELEN REHBERG AKA LISA PIERCE.
(NOTICE OF OPPORTUNITY)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

OCTOBER 29, 2014

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

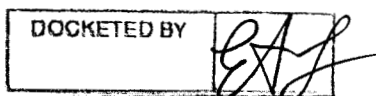
NOVEMBER 5, 2014 AND NOVEMBER 6, 2014

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission

DOCKETED

OCT 20 2014



Jodi A. Jerich
JODI JERICH
EXECUTIVE DIRECTOR

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

BOB STUMP - Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

IN THE MATTER OF:

SEED CORPORATION, an Arizona
Corporation dissolved by administrative
action;

RANDALL DUANE SIMONSON and
MARILYN J. SIMONSON, husband and
wife; and

KARL HENRY REHBERG AKA SHAWN
PIERCE, and HELEN REHBERG AKA
LISA PIERCE, husband and wife;

Respondents.

DOCKET NO. S-20844A-12-0122

DECISION NO. _____

OPINION AND ORDER

DATES OF PRE-HEARING
CONFERENCES:

May 9 and 30, 2012, and January 8, 2013

DATES OF HEARING:

February 19, 2013

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Marc E. Stern and Mark Preny¹

APPEARANCES:

Randall Duane Simonson and Marilyn J. Simonson, pro
per and for SEED Corporation;

Mr. Steven Briggs and Ms. Stacy Luedtke, Staff
Attorneys, on behalf of the Securities Division of the
Arizona Corporation Commission.

BY THE COMMISSION:

On March 30, 2012, the Securities Division ("Division") of the Arizona Corporation
Commission ("Commission") filed a Notice of Opportunity for Hearing ("Notice") against SEED
Corporation ("SEED"), Randall Duane Simonson and Marilyn J. Simonson, husband and wife, and

¹ The proceedings were held before Administrative Law Judge Marc E. Stern. Administrative Law Judge Marc E. Stern
and Administrative Law Judge Mark Preny drafted the Recommended Opinion and Order.

1 Karl Henry Rehberg (aka Shawn Pierce), and Helen Rehberg (aka Lisa Pierce), husband and wife
2 (collectively "Respondents"), in which the Division alleged multiple violations of the Arizona
3 Securities Act ("Act") in connection with the offer and sale of securities in the form of stock and
4 notes.

5 The Respondent Spouses, Marilyn J. Simonson and Helen Rehberg (aka Lisa Pierce), were
6 joined in the action for the purpose of determining the liability of the marital communities pursuant to
7 A.R.S. § 44-2031(C).

8 The Respondents were duly served with copies of the Notice.

9 On April 13, 2012, Respondents Randall Duane Simonson and Marilyn J. Simonson filed a
10 request for hearing in this matter.

11 On April 23, 2012, by Procedural Order, a pre-hearing conference was scheduled on May 9,
12 2012, in response to the Simonsons' request for hearing.

13 On May 3, 2012, Respondents Karl Henry Rehberg and Helen Rehberg filed requests for
14 hearing in this matter.

15 On May 7, 2012, by Procedural Order, a second pre-hearing conference was scheduled on
16 May 30, 2012, in response to the Rehbergs' requests for hearing.

17 On May 9 and May 30, 2012, the pre-hearing conferences were held as scheduled. The
18 Division appeared with counsel and the Simonson Respondents appeared on their own behalf at the
19 May 9, 2012, pre-hearing conference and the parties indicated they were discussing a possible
20 settlement with respect to the Simonson Respondents.

21 On May 30, 2012, at the second pre-hearing conference scheduled in response to the
22 Rehbergs' requests for a hearing, the Division appeared with counsel and Mr. Simonson appeared on
23 his own behalf. The Rehbergs did not appear. The Division and the Simonsons were continuing their
24 discussions, but in the interim the Division requested that a hearing be scheduled.

25 On May 31, 2012, by Procedural Order, a hearing was scheduled to commence on November
26 13, 2012, with additional days of hearing on November 26, 27, 28, 29 and 30, 2012.

27 On October 29, 2012, it was determined that a scheduling conflict had arisen with the
28 scheduled commencement of the proceeding on November 13, 2012, and it was necessary to

1 reschedule the commencement of the proceeding by Procedural Order to November 26, 2012.

2 On November 19, 2012, due to on-going construction renovations at the Commission, it
3 became necessary to continue the proceeding. As a result, the hearing was continued to January 8,
4 2013.

5 On January 8, 2013, the Division appeared through counsel and Mr. and Mrs. Simonson
6 appeared on their own behalf at the commencement of the proceeding. Mr. and Mrs. Rehberg did not
7 appear. After a brief recess, counsel for the Division and the Simonsons indicated that they were in
8 the process of concluding a settlement in the proceeding and that a proposed Consent Order would be
9 submitted for approval by the Commission. The Division requested that the proceeding be continued
10 with respect to the presentation of evidence against the Rehbergs.

11 On January 16, 2013, by Procedural Order, the hearing was continued to commence on
12 February 19, 2013.

13 On February 19, 2013, a full public hearing was commenced before a duly authorized
14 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Division
15 appeared through counsel and Mr. and Mrs. Simonson appeared on their own behalf, and on behalf of
16 SEED, because they had not entered into a Consent Order as was indicated previously. Mr. and Mrs.
17 Rehberg did not appear. At the conclusion of the proceeding, the Division agreed to file a closing
18 brief by April 1, 2013. Mr. Simonson indicated that he did not intend to file anything further.

19 On April 1, 2013, the Division filed its post-hearing brief.

20 * * * * *

21 **DISCUSSION**

22 **I. Testimony**

23 Susan Sica

24 Susan Sica testified that she is an Arizona resident employed as a bookkeeper.² Ms. Sica
25 testified that she first became aware of the investment opportunity with SEED from her employer,
26 Howard Lein.³ Ms. Sica attended a meeting at SEED's offices where Mr. Simonson discussed

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28 ² Tr. at 43, 45.

³ Tr. at 43-44.

1 investment opportunities with the company.⁴ Ms. Sica testified that she learned SEED's business
 2 was constructing "green" storage facilities.⁵ Ms. Sica also testified that, at this meeting, Mr. Pierce
 3 (aka Mr. Rehberg) told her that the minimum investment would be \$42,500, or 10,000 shares at \$4.25
 4 per share.⁶ Ms. Sica signed two investment checks to SEED on behalf of Mr. Lein, one dated August
 5 9, 2007, in the amount of \$4,250, and one dated August 9, 2007, in the amount of \$17,000.⁷ Ms. Sica
 6 testified that she signed a Subscription Agreement on behalf of Mr. Lein, for his purchase of 5,000
 7 shares of SEED stock, at \$4.25 per share, on August 9, 2007.⁸

8 Ms. Sica testified that she also invested \$12,750 of her own money in SEED, with a check
 9 dated August 13, 2007.⁹ Ms. Sica signed a Subscription Agreement purchasing 3,000 shares of
 10 SEED stock, at \$4.25 per share, on August 9, 2007, which was accepted by Randall Simonson per his
 11 signature, as president, dated August 23, 2007.¹⁰ Ms. Sica testified that she received an August 28,
 12 2007 letter from Randall Simonson, as president of SEED, welcoming her as a Founding
 13 Shareholder.¹¹ The Subscription Agreement displayed a footer on each page thereof reading
 14 "COPYRIGHT 2007 S. PIERCE, ALL RIGHTS RESERVED."¹²

15 Ms. Sica testified she received a letter in the mail from SEED, signed by Mr. Simonson, dated
 16 September 24, 2007.¹³ The letter stated that SEED had retained Fennemore Craig as legal counsel
 17 who informed the company that "our private placement offering earlier this summer did not meet
 18 federal or state securities law guidelines due to, among other things, inadequate disclosure and
 19 documentation."¹⁴ The letter also gave the following information regarding the Rehberg
 20 Respondents:

21 [C]onsultants Shawn and Lisa Pierce are no longer affiliated with
 22 SEED Corporation. Through the diligence efforts of Fennemore Craig

23 ⁴ Tr. at 44-45.

24 ⁵ Tr. at 45.

⁶ Tr. at 44.

25 ⁷ Tr. at 45-46; Exh. S-19.

⁸ Tr. at 65-66, 68; Exhs. S-25, S-42.

26 ⁹ Tr. at 47; Exh S-21.

¹⁰ Tr. at 53-54; Exhs. S-20, S-47.

27 ¹¹ Tr. at 61; Exh. S-22.

¹² Tr. at 53; Exh. S-47. (Emphasis in original).

28 ¹³ Tr. at 48-49; Exh. S-9.

¹⁴ Tr. at 48; Exh. S-9.

1 and the management of Seed [sic], it was discovered they were not who
2 they claimed to be, but rather Karl and Helen Rehberg. The Rehbergs'
3 [sic] were actually federal fugitives wanted for securities fraud. They
4 were subsequently arrested and are being extradited to Florida. The
5 Rehberg's [sic] never had access to SEED's bank accounts.¹⁵

6 Ms. Sica testified that she was not aware of the true identities of the Rehbergs prior to reading
7 the letter.¹⁶ Ms. Sica considered this information relevant as she would not have invested had she
8 known about the Rehbergs' identities and backgrounds.¹⁷ Ms. Sica testified that she received a copy
9 of SEED's "Executive Summary of the Business Plan and Stock Offering" after making her
10 investment.¹⁸ The SEED Executive Summary provided the following information regarding
11 Respondent Rehberg, under his alias Shawn Pierce:

12 CSL Breckenridge, LLC is orchestrating the financial and corporate
13 structure for all the companies involved in the Consortium under the
14 auspices of Dr. Shawn Pierce, PhD. He has brought together the
15 entities comprising the Consortium, making this project possible, and
16 further developed the concept and financial structure for SEED. CSL
17 remains a consultant to Alter-Air, Amason, ETA, as well as SEED, but
18 is not a shareholder, officer nor director of any of them. He provides
19 the liaison between the companies and has developed some of the
20 principal ideas behind several of the Consortiums [sic] products and
21 financial strategies. CSL does have a limited amount of stock options
22 in each Consortium member.¹⁹

23 Ms. Sica testified that prior to investing, Mr. Pierce (aka Mr. Rehberg) was introduced to her as
24 working with SEED by "putting together the paperwork, financial end."²⁰

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26 ¹⁵ Tr. at 49; Exh. S-9.

27 ¹⁶ Tr. at 50.

¹⁷ Tr. at 50.

¹⁸ Tr. at 50-51.

¹⁹ Tr. at 52; Exh. S-10.

28 ²⁰ Tr. at 52.

1 Also subsequent to making her investment, Ms. Sica received a Private Placement
2 Memorandum regarding SEED, dated October 30, 2007.²¹ The Private Placement Memorandum
3 expanded upon the earlier information disclosed in Mr. Simonson's September 24, 2007 letter:

4 The Company previously engaged CSL Breckenridge, LLC, the
5 principals of which were an individual going by the name of Dr. Shawn
6 Pierce, Ph.D. and his wife Lisa Pierce, to bring together the Company
7 and the Consortium members and to put together the financial and
8 corporate structure for the Company and the Consortium members.
9 The Company recently found out that Dr. Shawn Pierce, Ph.D. is
10 actually Karl Henry Rehberg and that Lisa Pierce is actually Helen
11 Rehberg. Further, the Company recently found out that Karl Henry
12 Rehberg and Helen Rehberg are wanted by the Federal Bureau of
13 Investigation for alleged securities law violations in connection with
14 the sale of unregistered securities, and they have been on the run from
15 law enforcement since December 1998. Upon becoming aware of the
16 true identity of Karl Henry Rehberg and Helen Rehberg and their
17 alleged securities law violations, the Company immediately ended its
18 relationship with the Rehbergs and CSL Breckenridge, LLC. CSL
19 Breckenridge, LLC was previously granted options to purchase shares
20 of stock in the Company. The Company's position is that any options
21 held by the Rehbergs or CSL Breckenridge, LLC to purchase stock in
22 the Company are void and will not be honored by the Company.²²

23 The October 30, 2007 Private Placement Memorandum further advised that Accredited Investors
24 would have the opportunity to either reaffirm or rescind their initial investments while investors who
25 were not accredited would be required to rescind.²³ Ms. Sica sought rescission.²⁴ A November 12,

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27 ²¹ Tr. at 57; Exh. S-15.

²² Tr. at 56-57; Exh. S-15.

²³ Exh. S-15.

28 ²⁴ See Tr. at 53, 59, 61; Exh. S-47.

1 2007 Private Placement Memorandum gave the following information regarding rescission:

2 As of the date of this Memorandum, four (4) Prior Investors have
3 requested and received a return of their funds invested, for a total of
4 \$221,000. Besides those four (4) Prior Investors, we have received
5 official documentation requesting rescission from seven (7) Prior
6 Investors, three of whom are accredited investors, for a total of
7 \$56,950, and four of whom are unaccredited investors, for a total of
8 \$87,989. Those seven (7) Prior Investors have not yet received a return
9 of their funds. Additionally, all unaccredited Prior Investors will be
10 required to rescind.²⁵

11 Ms. Sica testified that she believed she would receive her money back by December 31, 2007,
12 pursuant to the terms of the November 12, 2007 Private Placement Memorandum, however, none of
13 her investment was returned.²⁶ Ms. Sica testified that she followed up her request for rescission with
14 a January 4, 2008 letter to Randall and Marilyn Simonson again requesting return of her investment.²⁷
15 Ms. Sica testified that she once again requested rescission in an e-mail to Randall Simonson, dated
16 March 6, 2008.²⁸

17 Howard Lein

18 Howard Lein testified that he is an Arizona resident.²⁹ Mr. Lein testified that he became
19 aware of SEED through one of his associates.³⁰ Mr. Lein testified he met with two men, including
20 Mr. Simonson, regarding investment opportunities with SEED.³¹ Mr. Lein learned that SEED was
21 going to build an energy efficient records storage facility in Mesa, Arizona.³² Mr. Lein testified that
22 he expected to receive a return on his investment after the facility had been built.³³ Mr. Lein testified
23 that he authorized Susan Sica to sign checks and a subscription agreement on his behalf for SEED

24 ²⁵ Tr. at p. 60; Exh. S-16.

25 ²⁶ Tr. at 59, 61-62.

26 ²⁷ Tr. at 62-63; Exh. S-23.

27 ²⁸ Tr. at 63-64; Exh. S-24.

28 ²⁹ Tr. at 72-73.

³⁰ Tr. at 72.

³¹ Tr. at 72.

³² Tr. at 73.

³³ Tr. at 74.

1 stock in the total price of \$21,250.³⁴

2 Subsequently, Mr. Lein was offered rescission, and he expected to be repaid within thirty days
3 of signing the rescission agreement.³⁵ Mr. Lein acknowledged that he did not carefully read the
4 terms of the Private Placement Memoranda regarding rescission.³⁶ Mr. Lein testified that he did not
5 receive any of his money back.³⁷

6 Edward Welday

7 Edward Welday testified that he is an Arizona resident and is currently retired.³⁸ Mr. Welday
8 first heard about SEED when he accompanied some acquaintances to two meetings about the
9 company.³⁹ Mr. Welday testified he first met Mr. Simonson at the second such meeting.⁴⁰ Mr.
10 Welday testified that Mr. Simonson told him he could invest with SEED by purchasing stock or a
11 promissory note, and that funds so invested would be used by SEED for operating costs.⁴¹ Mr.
12 Welday did not discuss his financial situation with anyone at SEED prior to investing.⁴²

13 On September 28, 2008, Mr. Welday used a personal check to invest \$20,000 with SEED for
14 a promissory note.⁴³ The note, signed by Mr. Welday and Mr. Simonson, provided for repayment at
15 a 10% interest rate, payable in \$500 monthly installments beginning January 1, 2009.⁴⁴ Mr. Welday

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18 ³⁴ Tr. at 75-76; Exhs. S-19, S-25, S-42.

19 ³⁵ Tr. at 74-75.

20 ³⁶ Tr. at 83. The October 30, 2007 Private Placement Memorandum provided the following information to investors
21 regarding rescission:

22 The source of the funds with which the Company will repay Investors electing to rescind their initial
23 investments will be the proceeds, if any, from the balance payable for subscriptions by Investors
24 electing to reaffirm their initial investments pursuant to this offering, the Company's operations, and
concurrent and future equity financings. There can be no assurance, however, that the Company will in
fact generate any proceeds from the balance payable on current subscriptions, its operations or
concurrent or future equity financings or that the proceeds generated will be sufficient to repay the total
number of Investors electing rescission of their investments. The failure to generate sufficient proceeds
will have a material adverse effect on the Company's ability to repay the Investors electing rescission in
a timely manner and on the Company's business, operating results and financial condition. Tr. at 80;
Exh. S-15.

25 Similar provisions were contained in the November 12, 2007 Private Placement Memorandum. See Tr. at 82; Exh. S-16.

26 ³⁷ Tr. at 83.

27 ³⁸ Tr. at 86.

28 ³⁹ Tr. at 87.

⁴⁰ Tr. at 87.

⁴¹ Tr. at 88-89.

⁴² Tr. at 89.

⁴³ Tr. at 89-92; Exhs. S-85, S-86.

⁴⁴ Tr. at 89-90; Exh. S-85.

1 testified that he received only one payment, in the amount of \$500, on or about December 30, 2008.⁴⁵

2 William Santee, Sr.

3 Mr. Santee testified that he is a special investigator for the Division.⁴⁶ Mr. Santee testified
4 that he took over the case regarding the Respondents following the retirement of another
5 investigator.⁴⁷ Mr. Santee testified that the Rehbergs (aka Pierces) were married in 1982 and were
6 still married in 1998, when they were charged for securities fraud in Florida.⁴⁸ Mr. Santee reviewed
7 Commission documents to discover that the Respondents were not registered securities dealers or
8 salesmen and that SEED had not registered securities.⁴⁹ Mr. Santee testified that he could not locate
9 any SEC Form D filing for an exemption from securities registration having been filed by SEED.⁵⁰

10 Mr. Santee testified as to the existence of an April 18, 2007 Articles of Incorporation for
11 SEED, a June 10, 2008 Annual Report filed for SEED, and an October 23, 2009 Certificate of
12 Dissolution for SEED.⁵¹ Mr. Santee testified that the June 10, 2008 Annual Report identified Mr.
13 Simonson as president and CEO of SEED and Mrs. Simonson as vice president, with the Simonsons
14 both listed as directors.⁵²

15 Mr. Santee further testified that in the course of his investigation he discovered court records
16 from Florida regarding legal actions against the Rehbergs.⁵³ Specifically, Mr. Santee testified that he
17 discovered an indictment for conspiracy in United States District Court, Middle District of Florida,
18 against the Rehberg Resondents, a plea agreement signed by Mr. Rehberg on January 8, 2008, a
19 Judgment acknowledging Mr. Rehberg's guilty plea to Conspiracy to Execute a Scheme to Defraud
20 Investor-Victims by Mail Fraud, and a Sentencing Memorandum in Support of a Reasonable
21 Sentence regarding Mrs. Rehberg.⁵⁴ Based on his research into the Rehbergs, Mr. Santee testified
22 that the Rehbergs were being investigated in Florida for investment fraud of over \$20 million dollars

23 ⁴⁵ Tr. at 92.

24 ⁴⁶ Tr. at 95.

⁴⁷ Tr. at 97.

25 ⁴⁸ Tr. at 97. The Sentencing Memorandum in Support of a Reasonable Sentence, filed in U.S. District Court on behalf of
Ms. Rehberg on August 20, 2008, noted that she was still married to Mr. Rehberg at the time. Exh. S-3d.

26 ⁴⁹ Tr. at 97-98; Exh. S-1.

⁵⁰ Tr. at 98.

27 ⁵¹ Tr. at 98-99; Exh. S-2.

⁵² Tr. at 99-100; Exh. S-2b.

⁵³ Tr. at 100; Exh. S-3.

28 ⁵⁴ Tr. at 100-101; Exh. S-3.

1 and they were in the process of plea bargaining when they fled to Arizona and adopted the names of
2 Shawn and Helen Pierce.⁵⁵ Mr. Santee testified that he believed the Rehbergs resided in Arizona
3 under these assumed names from 1998 until their arrest in August 2007.⁵⁶ Mr. Santee testified that
4 Mrs. Rehberg was released from federal incarceration on July 14, 2009, and that Mr. Rehberg was
5 released on December 28, 2011.⁵⁷

6 Mr. Santee testified that, pursuant to a subpoena, Mr. Simonson produced numerous
7 subscription agreements from multiple investors in SEED.⁵⁸ Mr. Simonson also testified that bank
8 records for SEED, acquired by subpoena, showed Mr. and Mrs. Simonson as signers for SEED's
9 business account applications.⁵⁹ Mr. Santee testified that a review of the records obtained determined
10 that, prior to the arrest of Mr. Rehberg, SEED had received investments totaling \$1,432,577.31.⁶⁰ Of
11 those investments, \$221,000 was repaid to investors.⁶¹ Subsequent to Mr. Rehberg's arrest, SEED
12 received investments from five additional investors, raising the investment total to \$1,629,577.31,
13 with an additional \$500 repayment having been made.⁶²

14 Mr. Santee also testified regarding an examination under oath of Mr. Simonson, taken on July
15 6, 2011.⁶³ Mr. Simonson had stated that when SEED was started, Shawn Pierce (aka Karl Henry
16 Rehberg), "was supposed to get 50 percent of it."⁶⁴ Mr. Santee also testified that Mr. Simonson had
17 stated Mr. Pierce (aka Mr. Rehberg) had "found a group" of investors and that all 44 of the original
18 investors of the approximate \$1.3 million came through Mr. Pierce (aka Mr. Rehberg).⁶⁵

19 Mr. Santee testified that a background check would have been necessary to discover that the
20 Rehbergs were wanted for criminal activity.⁶⁶ According to Mr. Santee, anyone could request such
21 information from local law enforcement, however, without a correct name or known alias the
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23 ⁵⁵ Tr. at 102; Exh. S-3.

24 ⁵⁶ Tr. at 103.

25 ⁵⁷ Tr. at 103; Exh. S-4.

26 ⁵⁸ Tr. at 104-105; Exhs. S-29 to S-72.

27 ⁵⁹ Tr. at 106-109; Exhs. S-81 to S-84.

28 ⁶⁰ Tr. at 110-113; Exh. S-80a.

⁶¹ Tr. at 113; Exh. S-80a.

⁶² Tr. at 111, 113-114; Exh. S-80b.

⁶³ Tr. at 115; Exh. S-5.

⁶⁴ Tr. at 115-116; Exh. S-5 at 17.

⁶⁵ Tr. at 117; Exh. S-5 at 21-22.

⁶⁶ Tr. at 122.

1 information may not be discovered.⁶⁷ Mr. Santee further testified that the FBI maintains a public
2 most wanted list with pictures.⁶⁸ Mr. Santee testified that, according to the police report, the
3 Rehbergs' true identities were discovered after the police noticed they had a counterfeit license plate
4 on their vehicle.⁶⁹

5 Randall Simonson

6 Mr. Simonson testified that he was the president and CEO of SEED Corporation.⁷⁰ Mr.
7 Simonson testified that he has been an Arizona resident since January 1976, and that he has been
8 married to Marilyn Simonson nearly fifty years.⁷¹ Mr. Simonson had thirty-five years experience as a
9 general contractor.⁷² In 2004, Mr. Simonson developed a concept for starting a self-sustainable self-
10 storage business.⁷³ Mr. Simonson testified that, through a friend, he met Shields Fair, who ran Alter-
11 Air, an air conditioning business based on chilling and circulating water using solar power.⁷⁴ Mr.
12 Simonson testified he met Karl Rehberg, as Shawn Pierce, through Shields Fair, with whom Mr.
13 Rehberg had worked at the time.⁷⁵

14 According to Mr. Simonson, Mr. Pierce (aka Mr. Rehberg) had been working with Alter-Air
15 and three other companies in Tempe for four years.⁷⁶ Mr. Simonson testified that Mr. Pierce (aka Mr.
16 Rehberg) realized Simonson's concept could utilize the services of all four of his affiliated
17 companies.⁷⁷ Mr. Simonson testified that he and Mr. Pierce (aka Mr. Rehberg) set up SEED and
18 moved into new offices with the other four companies in 2006.⁷⁸ Mr. Simonson testified that his due
19 diligence regarding Shawn Pierce (aka Karl Henry Rehberg) consisted of being "part of the system"
20 of companies for seven or eight months prior to setting up SEED with him.⁷⁹ Mr. Simonson testified
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22 ⁶⁷ Tr. at 122-124.

23 ⁶⁸ Tr. at 125.

24 ⁶⁹ Tr. at 124.

25 ⁷⁰ Tr. at 129.

26 ⁷¹ Tr. at 164-167.

27 ⁷² Tr. at 129.

28 ⁷³ Tr. at 129-130.

⁷⁴ Tr. at 130-131.

⁷⁵ Tr. at 131.

⁷⁶ Tr. at 129, 172.

⁷⁷ Tr. at 131-132.

⁷⁸ Tr. at 132-134, 136.

⁷⁹ Tr. at 172.

1 that he did not check Shawn Pierce's employment history or verify his educational background.⁸⁰

2 Mr. Simonson testified that SEED's first investor, Severina Vanagunas, had initially wanted
3 to invest in Alter-Air, but Alter-Air refused to take her investment as she was an unaccredited
4 investor.⁸¹ Mr. Pierce (aka Mr. Rehberg) met with her and she invested nearly \$10,000 in SEED.⁸²
5 Mr. Simonson testified that he worked on a business plan coordinating with the other four companies
6 while Mr. Pierce (aka Mr. Rehberg) "was putting together the financial side."⁸³ For his efforts, Mr.
7 Pierce (aka Mr. Rehberg) was to receive the same number of shares in the business as Mr.
8 Simonson.⁸⁴ Mr. Simonson testified that he was present with Mr. Pierce (aka Mr. Rehberg) at some
9 meetings with prospective investors.⁸⁵ Prospective investors were shown a video presentation of the
10 planned storage facility and the records storage system.⁸⁶ Prospective investors were also provided
11 an executive summary of the business plan and stock offering.⁸⁷ Mr. Pierce (aka Mr. Rehberg)
12 drafted subscription agreements that were sent to investors prior to his arrest.⁸⁸

13 Mr. Simonson testified that prior to Mr. Rehberg's arrest on or about August 17, 2007, the
14 Respondents had raised approximately \$1.4 million of investments.⁸⁹ Approximately \$200,000 more
15 was raised following Mr. Rehberg's arrest.⁹⁰ The SEED investors were not made aware that Mr.
16 Rehberg was using an alias and attempting to avoid arrest until after he was arrested.⁹¹

17 Mr. Simonson testified that the Respondents developed plans to build an 186,000 square foot
18 storage facility in Mesa.⁹² Mr. Simonson further testified that the Respondents purchased the land on
19 which the facility was intended to be built for \$1.2 million, with a down payment of \$650,000.⁹³
20 Approximately \$150,000 more was paid to Alter-Air to develop the air conditioning system for the
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22 ⁸⁰ Tr. at 172-173.

23 ⁸¹ Tr. at 137.

24 ⁸² Tr. at 138; Exh. S-80.

25 ⁸³ Tr. at 138, 143.

26 ⁸⁴ Tr. at 166.

27 ⁸⁵ Tr. at 162-163.

28 ⁸⁶ Tr. at 162-163.

⁸⁷ Tr. at 165-166; Exh. S-10.

⁸⁸ Tr. at 174-177.

⁸⁹ Tr. at 146, 168, 169.

⁹⁰ Tr. at 146.

⁹¹ Tr. at 168.

⁹² Tr. at 139.

⁹³ Tr. at 147.

1 storage facility.⁹⁴ Mr. Simonson testified that \$100,000 was paid to develop the Radio Frequency
 2 Identification ("RFID") system that would be used to tag and locate boxes within the storage
 3 facility.⁹⁵ Other expenses included renting a 5,000 square foot building for several months to test the
 4 RFID system, acquiring an appraisal of the business to show banks when seeking a business loan, and
 5 obtaining a tax evaluation.⁹⁶ Mr. Simonson testified that he took a salary of \$25,000 for 2007.⁹⁷ Mr.
 6 Simonson also testified to having paid \$15,000 to an individual who had worked for the business
 7 three years without compensation but who needed money to visit his dying father in San Francisco.⁹⁸

8 Following Mr. Rehberg's arrest in August 2007, Mr. Simonson testified that he was unable to
 9 secure financing from two banks he visited.⁹⁹ Mr. Simonson testified that he had been working with
 10 an attorney to help put the SEED business plan together and assist in raising funds, however the
 11 attorney was unable to arrange any additional funding for SEED.¹⁰⁰ Mr. Simonson testified that he
 12 also paid the attorney \$80,000 after Mr. Rehberg's arrest to do "anything they needed to do to make
 13 sure that SEED shareholders were protected."¹⁰¹ Mr. Simonson testified that the attorney provided
 14 him with a letter offering rescission and instructed him to send it out to the shareholders on SEED
 15 letterhead, which was done.¹⁰²

16 Mr. Simonson testified that he came to meet Mr. Welday through Mr. Welday's caretaker,
 17 who knew that Mr. Simonson was looking for additional funding for SEED and that Mr. Welday was
 18 looking for an investment opportunity.¹⁰³ Mr. Simonson testified that Mr. Welday purchased a note
 19 for \$20,000 in September.¹⁰⁴ Mr. Simonson testified that some other shareholders chose to purchase
 20 additional options.¹⁰⁵ By December, Mr. Simonson testified that SEED was out of money and that he
 21 borrowed approximately \$12,600 from his father to pay back rent to SEED's landlord, who forced
 22

23 ⁹⁴ Tr. at 148-149, 155.

24 ⁹⁵ Tr. at 149, 155.

25 ⁹⁶ Tr. at 150-151.

26 ⁹⁷ Tr. at 155.

27 ⁹⁸ Tr. at 161.

28 ⁹⁹ Tr. at 152, 158, 169.

¹⁰⁰ Tr. at 140-143, 151-153.

¹⁰¹ Tr. at 156.

¹⁰² Tr. at 157, 160.

¹⁰³ Tr. at 153.

¹⁰⁴ Tr. at 154, 159.

¹⁰⁵ Tr. at 160-161.

1 them out of their offices in January 2010.¹⁰⁶ Mr. Simonson further testified that the land purchased
 2 for the facility had to be given up “in lieu of foreclosure with the ability to buy it back at no
 3 penalty.”¹⁰⁷

4 Mr. Simonson testified that a Private Placement Memorandum was sent to all SEED investors
 5 by SEED’s counsel after the arrest of Mr. Rehberg.¹⁰⁸ The Private Placement Memorandum offered
 6 rescission to the investors.¹⁰⁹ A second Private Placement Memorandum, dated November 12, 2007,
 7 was also sent out to investors by SEED’s counsel at the time.¹¹⁰

8 II. Legal Argument

9 Sale of Unregistered Securities: The SEED Note

10 The Division contends that the SEED promissory note (“SEED Note”) issued to Edward
 11 Welday is a security within the meaning of A.R.S. § 44-1801(26), and therefore needed to be
 12 registered under A.R.S. § 44-1841.¹¹¹ The definition of security under A.R.S. § 44-1801(26) includes
 13 “any note.” Under *State v. Tober*, 173 Ariz. 211, 213, 841 P.2d 206, 208 (1992), all notes are
 14 considered securities subject to the registration provisions unless specifically exempted from
 15 registration pursuant to A.R.S. § 44-1843 or § 44-1843.01, or sold through an exempt transaction
 16 under A.R.S. § 44-1844. The burden of proving the existence of an exemption rests upon the party
 17 raising the defense.¹¹² Here, the Respondents have failed to present evidence that any of the statutory
 18 exemptions would apply to the SEED Note. The weight of the evidence establishes that the sale of
 19 the SEED Note was subject to registration requirements.

20 Sale of Unregistered Securities: The SEED Stock

21 The Division contends that the SEED stock is a security within the meaning of A.R.S. § 44-
 22 1801(26), and therefore needed to be registered under A.R.S. § 44-1841. Stock is included in the

23 ¹⁰⁶ Tr. at 154-155, 158-159.

24 ¹⁰⁷ Tr. at 164.

¹⁰⁸ Tr. at 169-170; Exh. S-15. This initial private placement memorandum was dated October 30, 2007. Exh. S-15.

25 ¹⁰⁹ Tr. at 182; Exh. S-15.

¹¹⁰ Tr. at 170-172; Exh. S-16.

26 ¹¹¹ **A.R.S. § 44-1841. Sale of unregistered securities prohibited; classification**

27 A. It is unlawful to sell or offer for sale within or from this state any securities unless the securities have been registered pursuant to article 6 or 7 of this chapter or are federal covered securities if the securities comply with section 44-1843.02 or chapter 13, article 12 of this title.

28 B. A person violating this section is guilty of a class 4 felony.

¹¹² A.R.S. § 44-2033; *State v. Baumann*, 125 Ariz. 404, 412, 610 P.2d 38, 46 (1980).

1 definition of security under A.R.S. § 44-1801(26).

2 Through subscription agreements with investors, SEED sold “stock” to investors.¹¹³ What
3 may constitute stock has not been expressly set forth under Arizona law. The Arizona Supreme
4 Court follows the reasoning of the United States Supreme Court when interpreting sections of
5 Arizona statutes that are identical or similar to the federal securities statutes, unless a good reason
6 exists to justify deviation.¹¹⁴ In contemplating whether the sale of shares called “stock” constitutes a
7 security transaction, the United States Supreme Court has expressed that the analysis requires an
8 examination of substance, not form.¹¹⁵ The instruments in question must “possess ‘some of the
9 significant characteristics typically associated with’ stock.”¹¹⁶ The characteristics associated with
10 common stock are (i) the right to receive dividends contingent upon an apportionment of profits; (ii)
11 negotiability; (iii) the ability to be pledged or hypothecated; (iv) the conferring of voting rights in
12 proportion to the number of shares owned; and (v) the capacity to appreciate in value.¹¹⁷

13 SEED, pursuant to its Articles of Incorporation, had authority to issue 25 million shares of
14 Class A and B stock.¹¹⁸ The shares of stock carried voting rights and the opportunity to receive
15 dividends.¹¹⁹ The SEED executive summary predicted that shares selling initially for \$5.00 could
16 appreciate in value to \$20.00 to \$30.00 based upon projected earnings from the Mesa storage
17 facility.¹²⁰ The subscription agreement stated that “the Shares may not be sold, hypothecated or
18 otherwise disposed of unless subsequently registered under the Securities Act and applicable state
19 securities laws or an exemption from such registration is available.”¹²¹ The subscription agreement
20 further warned that “[i]t is not anticipated that there will be any market for resale of the Shares and
21 the Shares will not be freely transferable at any time in the foreseeable future.”¹²² In practice,

23 ¹¹³ Tr. at 143, 174-176; Exhs. S-20, S-29-S-47, S-49, S-51, S-53-S-55, S-58-S-64, S-67, S-68, S-71-S-74, S-76-S-79.

24 ¹¹⁴ See *State v. Gunnison*, 127 Ariz. 110, 112-113, 618 P.2d 604, 606-607 (1980).

25 ¹¹⁵ See *United Housing Foundation, Inc. v. Forman*, 421 U.S. 837, 848, 95 S.Ct. 2051, 2058 (1975).

26 ¹¹⁶ *Landreth Timber Co. v. Landreth*, 471 U.S. 681, 686, 105 S. Ct. 2297, 2302 (1985) (citing *United Housing Foundation, Inc. v. Forman*, 421 U.S. 837, 850, 95 S.Ct. 2051, 2059 (1975)).

27 ¹¹⁷ *Landreth Timber Co. v. Landreth*, 471 U.S. 681, 686, 105 S. Ct. 2297, 2302 (1985).

28 ¹¹⁸ Exh. S-2a.

¹¹⁹ *Id.* Class B shares were limited to participating only in dividends paid in shares or fractional shares of Class B stock.

¹²⁰ Exh. S-10 at ACC002069.

¹²¹ Exh. S-14 at ACC002962.

¹²² *Id.*

1 however, at least one investor transferred shares to another shareholder.¹²³

2 Shareholders were entitled to dividends, voting rights, and an opportunity for the stock to
3 appreciate in value. While the SEED stock subscription agreement stated restrictions on negotiability
4 and the ability to be pledged, in actuality shares were transferred on at least one occasion. The
5 weight of the evidence establishes that the SEED stock possessed significant characteristics
6 associated with stock so as to be considered a security within the meaning of A.R.S. § 44-1801(26).

7 The Respondents contend that SEED stock was exempt from registration requirements
8 pursuant to federal Rules 504¹²⁴ ("Rule 504") and/or 506¹²⁵ ("Rule 506") of Regulation D. The
9 burden of proof of establishing an exemption is on the party claiming it.¹²⁶

10 Under Rule 504, sales of securities may qualify for an exemption provided they satisfy
11 requisite conditions regarding integration of sales, limitations on the manner of offering, and
12 limitations on resale.¹²⁷ The limitations as to manner of offering require that neither the issuer, nor
13 any person acting on its behalf, offer or sell the securities by any form of general solicitation or
14 general advertising.¹²⁸ In determining what constitutes a general solicitation, the SEC has
15 emphasized the importance of the issuer having established substantive and pre-existing relationships
16 with those being solicited.¹²⁹ Here, the record does not establish the existence of any such
17 relationships between the Respondents and the SEED investors.¹³⁰

18 The limitations on offering and resale may be waived provided the sales are made in
19 compliance with relevant state requirements for registration or exemption therefrom.¹³¹ The SEED
20 stock was not registered pursuant to the Act. Offers and sales of securities by an issuer in compliance
21 with Rule 504 shall be exempt from the registration requirements of A.R.S. §§ 44-1841 and 44-1842,
22 provided the sales are made exclusively to accredited investors.¹³² Here, SEED stock was sold to

23
24 ¹²³ Exh. S-44 at ACC002646.

25 ¹²⁴ 17 C.F.R. § 230.504.

26 ¹²⁵ 17 C.F.R. § 230.506.

27 ¹²⁶ A.R.S. § 44-2033.

28 ¹²⁷ 17 C.F.R. §§ 230.502(a), (c), (d), 230.504(b)(1).

¹²⁸ 17 C.F.R. § 230.502(c).

¹²⁹ See *E.F. Hutton & Co. Inc.*, SEC No-Action Letter, 1985 WL 55680 (Dec. 3, 1985).

¹³⁰ Tr. at 44, 72; Exh. S-5 at 38.

¹³¹ 17 C.F.R. § 230.504(b)(1).

¹³² A.A.C. R14-4-140(B), (D).

1 unaccredited investors.¹³³ Therefore, the Respondents fail to qualify for an exemption under Rule
2 504 as they have failed to meet the general conditions set forth under 17 C.F.R. § 230.504(b).¹³⁴

3 Similarly, the Respondents failed to establish an exemption under Rule 506.¹³⁵ An exemption
4 under Rule 506 is conditioned upon the same prohibitions of general advertising and general
5 solicitation as a Rule 504 exemption.¹³⁶ As noted above, the Respondents have failed to demonstrate
6 the existence of substantive, pre-existing relationships with the investors who purchased SEED stock.

7 Rule 506 further imposes a maximum of thirty-five purchasers who are not accredited
8 investors.¹³⁷ Each such purchaser must, individually or with his representative, have knowledge and
9 experience in financial and business matters making him capable of evaluating the merits and risks of
10 the prospective investment, or the issuer must reasonably believe prior to any sale that the purchaser
11 meets this description.¹³⁸ Further, the issuer must establish that all offerees had access to or
12 disclosure of the same type of information that a registration statement would provide.¹³⁹ To qualify
13 for the Rule 506 exemption, the Respondents would need to have offered evidence of their reasonable
14 belief as to each purchaser.¹⁴⁰ The record establishes that twelve of the SEED investors purchased
15 stock without completing an investor questionnaire.¹⁴¹ The subscription agreements specifically state
16 that they are being provided without a Private Placement Memorandum.¹⁴² The record does not
17 establish that sufficient information was provided to the investors to enable them to properly evaluate
18 the investment as required for an exemption under Rule 506.

19 The Respondents have asserted that the sale of SEED stock qualifies for an exemption from
20 registration under Rule 504 and/or Rule 506. However, the evidence of record does not support such

21 ¹³³ Exhs. S-36, S-39, S-40, S-41, S-43, S-45, S-46, S-60, S-67, S-72, S-76, S-79.

22 ¹³⁴ Respondents also failed to meet the requirements of 17 C.F.R. § 230.504(2), which mandates that the aggregate
23 offering price of the securities shall not exceed \$1,000,000. Here, the Respondents sold securities of a price totaling
approximately \$1.629 million. Exh. S-80b.

24 ¹³⁵ We note that Rule 506 was amended, effective September 23, 2013, to include an exemption for offerings not subject
to a limitation on the manner of offering. As the sales of SEED stock occurred prior to the effective date of this
amendment, we do not consider this additional exemption in our analysis.

25 ¹³⁶ 17 C.F.R. §§ 230.502(c), 230.506(b)(1).

26 ¹³⁷ 17 C.F.R. §§ 230.501(e)(1)(iv), 230.506(b)(2)(i).

¹³⁸ 17 C.F.R. § 230.506(b)(2)(ii).

¹³⁹ *McDaniel v. Compania Minera Mar de Cotes, Sociedad Anonimo, Inc.*, 528 F.Supp. 152, 164 (Dist. Ct. Ariz. 1981).

¹⁴⁰ *See Mark v. FSC Sec. Corp.*, 870 F.2d 331, 335 (6th Cir. 1989).

27 ¹⁴¹ Exhs. S-36, S-39, S-40, S-41, S-43, S-45, S-46, S-60, S-67, S-72, S-76, S-79.

28 ¹⁴² Exh. S-20 at ACC002175; See also Exhs. S-29-S-47, S-49, S-51, S-53-S-55, S-58-S-64, S-67, S-68, S-71-S-74, S-76-S-79.

1 a conclusion. The Respondents failed to meet their burden of proof to establish that the sale of SEED
2 stock was exempt from registration requirements.

3 Transactions by Unregistered Dealers or Salespersons

4 The Division contends that the Respondents violated A.R.S. § 44-1842 by selling securities in
5 SEED without being registered.¹⁴³ As determined above, the SEED stock and the SEED note are
6 securities subject to the registration requirements of A.R.S. § 44-1842. None of the Respondents
7 were registered as a securities salesman or dealer.¹⁴⁴ The Respondents have failed to present
8 evidence that they would qualify for an exemption from the requirements of A.R.S. § 44-1842.

9 Fraud

10 The Division contends that the Respondents' failure to disclose Mr. Rehberg's use of an alias,
11 his past criminal securities violations, and his outstanding arrest warrant are omissions of material
12 fact that constitute fraud pursuant to A.R.S. § 44-1991(A)(2).¹⁴⁵ Under A.R.S. § 44-1991(A)(2),
13 materiality will be found by showing a substantial likelihood that, under all circumstances, the
14 misstated or omitted fact would have assumed actual significance in the deliberations of a reasonable
15 buyer.¹⁴⁶ The test is an objective one, not subject to the actual significance of an omission or
16

17 ¹⁴³ **A.R.S. § 44-1842. Transactions by unregistered dealers and salesmen prohibited; classification**

18 A. It is unlawful for any dealer to sell or purchase or offer to sell or buy any securities, or for any salesman to sell or offer
19 for sale any securities within or from this state unless the dealer or salesman is registered as such pursuant to the
provisions of article 9 of this chapter.

20 B. A person violating this section is guilty of a class 4 felony.

¹⁴⁴ Exh. S-1.

¹⁴⁵ **A.R.S. § 44-1991. Fraud in purchase or sale of securities**

21 A. It is a fraudulent practice and unlawful for a person, in connection with a transaction or transactions within or from this
22 state involving an offer to sell or buy securities, or a sale or purchase of securities, including securities exempted under
section 44-1843 or 44-1843.01 and including transactions exempted under section 44-1844, 44-1845 or 44-1850, directly
or indirectly to do any of the following:

23 1. Employ any device, scheme or artifice to defraud.

24 2. Make any untrue statement of material fact, or omit to state any material fact necessary in order to make the statements
made, in the light of the circumstances under which they were made, not misleading.

25 3. Engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit.

26 B. In a private action brought pursuant to subsection A, paragraph 2 of this section or section 44-1992, if the person who
27 offered or sold the security proves that any portion or all of the amount recoverable under subsection A, paragraph 2 of
this section or section 44-1992 represents an amount other than the depreciation in value of the subject security resulting
from the part of the prospectus or oral communication, with respect to which the liability of the person is asserted, then
the amount shall not be recoverable. This subsection does not apply to any actions based on allegations of activities
constituting dishonest or unethical practices in the securities industry.

28 ¹⁴⁶ *Trimble v. Am. Sav. Life Ins. Co.*, 152 Ariz. 548, 553, 733 P.2d 1131, 1136 (App. 1986).

1 misstatement to any particular buyer.¹⁴⁷

2 Here, Mr. Rehberg represented himself to investors by the name Shawn Pierce.¹⁴⁸ The
3 subscription agreements sent to investors had a footer stating "Copyright 2007 S. Pierce, All Rights
4 Reserved."¹⁴⁹ Mr. Rehberg hid his true identity and prior illicit activity from potential investors. We
5 find that a reasonable buyer would have found this information material when considering investing
6 in SEED.¹⁵⁰ Respondent Rehberg violated A.R.S. § 44-1991(A)(2) by concealing his identity and
7 history from potential investors.

8 The Division further contends that Respondents SEED and Simonson also violated A.R.S. §
9 44-1991(A)(2) by failing to disclose Mr. Rehberg's true identity and prior illegal conduct.¹⁵¹ The
10 evidence of record established that Respondent Simonson had no knowledge of Mr. Rehberg's true
11 identity and prior illicit activity until after Rehberg's arrest.¹⁵² Following Mr. Rehberg's arrest, Mr.
12 Simonson sought the advice of legal counsel and disclosed Rehberg's identity to SEED investors.¹⁵³

13 The record establishes that Respondent Simonson, like the SEED investors, was deceived by
14 Mr. Rehberg's misrepresentation of his identity and nondisclosure of his prior illicit activity.
15 However, scienter is not a requirement in a civil violation of A.R.S. § 44-1991(A)(2).¹⁵⁴ Instead,
16 A.R.S. § 44-1991(A)(2) imposes an affirmative duty not to mislead.¹⁵⁵ The failure of Respondents
17 SEED and Simonson to disclose Mr. Rehberg's past when the offers were made constituted a
18 violation of A.R.S. § 44-1991(A)(2).

19
20
¹⁴⁷ *Id.*

¹⁴⁸ Tr. at 50, 102, 168-169.

¹⁴⁹ Tr. at 53; Exhs. S-20, S-29-S-47, S-49, S-51, S-53-S-55, S-58-S-64, S-67, S-68, S-71-S-74, S-76-S-79.

¹⁵⁰ Indeed, investor Susan Sica testified that she would not have invested in SEED had she known of Rehberg's past (Tr. at 50).

¹⁵¹ We note that the Notice specifically names only one Respondent, Mr. Rehberg, under the violation of A.R.S. § 44-1991. Notice at 10. In his opening statement at the hearing, counsel for the Division expressly stated that there was a "fraudulent failure of SEED Corporation and its officers to warn investors" about Mr. Rehberg. Tr. at 16. The Simonsons raised questions regarding documents and subpoenas, but the Simonsons did not request a continuance for any reason even though the Administrative Law Judge suggested something could be arranged if they needed additional time to bring in a witness. Tr. at 20-41. Randall Simonson further acknowledged his awareness that the Division was alleging that he committed fraud. Tr. at 39. As such, we find the Respondents received due process allowing substantive consideration of the allegation of fraud.

¹⁵² Tr. at 168-169; Exh. S-5 at 35-36.

¹⁵³ Tr. at 157-158; Exh. S-9 at ACC002084.

¹⁵⁴ *State v. Gunnison*, 127 Ariz. 110, 113, 618 P.2d 604, 607 (1980).

¹⁵⁵ *Aaron v. Fromkin*, 196 Ariz. 224, 227, 994 P.2d 1039, 1042 (App. 2000).

1 Good Faith Reliance on Advice of Counsel

2 Respondents contend that their reliance upon the advice of counsel acts as a defense to the
3 alleged violations of the Act. Respondents' argument of a good faith defense relies upon the factor
4 of intent being a necessary element of the alleged violations. As noted above, a civil fraud violation
5 under A.R.S. § 44-1991(A)(2) requires no element of scienter. Therefore, whether Respondents
6 acted in good faith reliance on the advice of counsel is irrelevant as to the alleged violation of A.R.S.
7 § 44-1991(A)(2).

8 Similarly, A.R.S. §§ 44-1841 and 44-1842 contain no language regarding a culpable mental
9 state for these offenses. Under A.R.S. § 13-202(B), a statutory offense that does not set forth a
10 culpable mental state will be one of strict liability.¹⁵⁶ Since A.R.S. §§ 44-1841 and 44-1842 are strict
11 liability offenses, whether Respondents acted in good faith under the advice of counsel is irrelevant to
12 determining whether the Respondents violated those statutes.¹⁵⁷

13 Community Property

14 The Division contends that the marital communities of the Simonsons and Rehbergs are liable
15 for any restitution and administrative penalties ordered. The Division further contends that the
16 Rehbergs' relocation to Florida does not relieve the Rehberg marital community of liability.

17 The Commission has the authority to join a spouse in an action to determine the liability of
18 the marital community.¹⁵⁸ All property acquired by either the husband or the wife during the
19

20 _____
¹⁵⁶ A.R.S. § 13-202 provides, in pertinent part:

21 B. If a statute defining an offense does not expressly prescribe a culpable mental state that is sufficient for commission of
22 the offense, no culpable mental state is required for the commission of such offense, and the offense is one of strict
23 liability unless the proscribed conduct necessarily involves a culpable mental state. If the offense is one of strict liability,
proof of a culpable mental state will also suffice to establish criminal responsibility.

¹⁵⁷ "[A]dvice of counsel is not a defense to a strict liability violation of the Act. It can, however, be considered by the
Commission as a mitigating factor in determining penalties and sanctions." Decision No. 58259 (April 8, 1993) at 11.

¹⁵⁸ **A.R.S. § 44-2031. Jurisdiction and venue of offenses and actions; joinder of spouse**

24 A. The superior court in this state shall have jurisdiction over violations of this chapter, the rules and orders of the
25 commission under this chapter and all actions brought to enforce any liability or duty created under this chapter, except
26 actions or proceedings brought under section 44-2032, paragraph 2, 3 or 4 or appeals filed under article 12 of this chapter,
over which the superior court in Maricopa county shall have exclusive jurisdiction.

27 B. Any action authorized by this chapter may be brought in the county in which the defendant is found, is an inhabitant or
transacts business, or in the county where the transaction took place, and in such cases, process may be served in any
other county in which the defendant is an inhabitant or in which the defendant is found.

28 C. The commission may join the spouse in any action authorized by this chapter to determine the liability of the marital
community.

1 marriage is the community property of the husband and wife, except for property that is (1) acquired
 2 by gift, devise, or descent; or (2) acquired after service of a petition for dissolution of marriage, legal
 3 separation or annulment if the petition results in a decree of dissolution of marriage, legal separation
 4 or annulment.¹⁵⁹ The Arizona Supreme Court has found that “the presumption of law is, in the
 5 absence of the contrary showing, that all property acquired and all business done and transacted
 6 during coverture, by either spouse, is for the community.”¹⁶⁰

7 Under A.R.S. § 25-214(B), the spouses have “equal management, control and disposition
 8 rights over their community property and have equal power to bind the community.”¹⁶¹ Either spouse
 9 may contract debts and otherwise act for the benefit of the community except as prohibited under
 10 A.R.S. § 25-214.¹⁶² “[A] debt is incurred at the time of the actions that give rise to the debt.”¹⁶³ “In
 11

12 A.R.S. § 44-2031(C) was amended effective July 24, 2014, pursuant to Laws 2014, Ch. 87 § 1, to include the following
 13 sentence: This subsection does not authorize the commission to join any individual who is divorced from the defendant at
 the time an action authorized by this chapter is filed.

14 **¹⁵⁹ A.R.S. § 25-211. Property acquired during marriage as community property; exceptions; effect of service of a
 petition**

15 A. All property acquired by either husband or wife during the marriage is the community property of the husband and
 wife except for property that is:

- 16 1. Acquired by gift, devise or descent.
- 17 2. Acquired after service of a petition for dissolution of marriage, legal separation or annulment if the petition results in a
 decree of dissolution of marriage, legal separation or annulment.

18 B. Notwithstanding subsection A, paragraph 2, service of a petition for dissolution of marriage, legal separation or
 annulment does not:

- 19 1. Alter the status of preexisting community property.
- 20 2. Change the status of community property used to acquire new property or the status of that new property as community
 property.
- 21 3. Alter the duties and rights of either spouse with respect to the management of community property except as prescribed
 pursuant to section 25-315, subsection A, paragraph 1, subdivision (a).

¹⁶⁰ *Johnson v. Johnson*, 131 Ariz. 38, 45, 638 P.2d 705, 712 (1981), citing *Benson v. Hunter*, 23 Ariz. 132, 134-35, 202 P.
 233, 233-34 (1921).

¹⁶¹ **A.R.S. § 25-214. Management and control**

22 A. Each spouse has the sole management, control and disposition rights of each spouse's separate property.

23 B. The spouses have equal management, control and disposition rights over their community property and have equal
 power to bind the community.

24 C. Either spouse separately may acquire, manage, control or dispose of community property or bind the community,
 except that joinder of both spouses is required in any of the following cases:

- 25 1. Any transaction for the acquisition, disposition or encumbrance of an interest in real property other than an unpatented
 mining claim or a lease of less than one year.
- 26 2. Any transaction of guaranty, indemnity or suretyship.
- 27 3. To bind the community, irrespective of any person's intent with respect to that binder, after service of a petition for
 dissolution of marriage, legal separation or annulment if the petition results in a decree of dissolution of marriage, legal
 separation or annulment.

¹⁶² **A.R.S. § 25-215. Liability of community property and separate property for community and separate debts**

28 A. The separate property of a spouse shall not be liable for the separate debts or obligations of the other spouse, absent
 agreement of the property owner to the contrary.

1 an action on such a debt or obligation the spouses shall be sued jointly and the debt or obligation shall
 2 be satisfied: first, from the community property, and second, from the separate property of the spouse
 3 contracting the debt or obligation.”¹⁶⁴ “A debt incurred by a spouse during marriage is presumed to
 4 be a community obligation; a party contesting the community nature of a debt bears the burden of
 5 overcoming that presumption by clear and convincing evidence.”¹⁶⁵

6 Here, Mr. Simonson has been married to Marilyn J. Simonson since 1963.¹⁶⁶ Mr. Rehberg
 7 has been married to Helen Rehberg since 1982.¹⁶⁷ The securities law violations committed by Mr.
 8 Simonson and Mr. Rehberg occurred while they were married. Any debt created by an order for
 9 restitution and administrative penalties arising from those violations would be considered as having
 10 been incurred at the time of the violation. The Respondents have presented no evidence to rebut the
 11 legal presumption that such debt would be a liability of the Simonson and Rehberg marital
 12 communities.

13 Regarding the Rehbergs, the further question arises as to whether their subsequent relocation
 14 to Florida would act as a defense to an order against the Rehbergs’ marital community. Florida is not
 15 a community property state.¹⁶⁸ Under Florida law, “the law of the situs has primary control over
 16 property within its borders.”¹⁶⁹ However, Florida courts have held that community property will
 17 retain its characteristics when brought into the state.¹⁷⁰ While the Rehbergs no longer reside in a
 18

19 B. The community property is liable for the premarital separate debts or other liabilities of a spouse, incurred after
 20 September 1, 1973 but only to the extent of the value of that spouse's contribution to the community property which
 21 would have been such spouse's separate property if single.

22 C. The community property is liable for a spouse's debts incurred outside of this state during the marriage which would
 23 have been community debts if incurred in this state.

24 D. Except as prohibited in section 25-214, either spouse may contract debts and otherwise act for the benefit of the
 25 community. In an action on such a debt or obligation the spouses shall be sued jointly and the debt or obligation shall be
 26 satisfied: first, from the community property, and second, from the separate property of the spouse contracting the debt or
 27 obligation.

28 ¹⁶³ *Arab Monetary Fund v. Hashim*, 219 Ariz. 108, 111, 193 P.3d 802, 805 (Ct. App. 2008).

¹⁶⁴ A.R.S. § 25-215(D).

¹⁶⁵ *Hrudka v. Hrudka*, 186 Ariz. 84, 91-92, 919 P.2d 179, 186-87 (Ct. App. 1995).

¹⁶⁶ Tr. at 164-165.

¹⁶⁷ Tr. at 97; Exh. S-3d at 4-5.

¹⁶⁸ *Herrera v. Herrera*, 673 So. 2d 143, 144 (Fla. 5th DCA 1996).

¹⁶⁹ *Quintana v. Ordonez*, 195 So. 2d 577, 579 (Fla. 3d DCA 1967).

¹⁷⁰ *See Republic Credit Corp. I v. Upshaw*, 10 So. 3d 1103, 1104 (Fla. 4th DCA 2009) (Since California does not
 recognize tenancy by the entireties as a form of ownership, proceeds from the sale of California home cannot retain
 characteristics it never had); *see also Quintana v. Ordonez*, 195 So. 2d 577, 579 (Fla. 3d DCA 1967) (adopting the rule set
 forth in Restatement, Conflict of Law § 290 (1934) that the “interests of one spouse in movables acquired by the other
 during the marriage are determined by the law of the domicile of the parties when the movables are acquired”).

1 action on such a debt or obligation the spouses shall be sued jointly and the debt or obligation shall be
 2 satisfied: first, from the community property, and second, from the separate property of the spouse
 3 contracting the debt or obligation.”¹⁶⁴ “A debt incurred by a spouse during marriage is presumed to
 4 be a community obligation; a party contesting the community nature of a debt bears the burden of
 5 overcoming that presumption by clear and convincing evidence.”¹⁶⁵

6 Here, Mr. Simonson has been married to Marilyn J. Simonson since 1963.¹⁶⁶ Mr. Rehberg
 7 has been married to Helen Rehberg since 1982.¹⁶⁷ The securities law violations committed by Mr.
 8 Simonson and Mr. Rehberg occurred while they were married. Any debt created by an order for
 9 restitution and administrative penalties arising from those violations would be considered as having
 10 been incurred at the time of the violation. The Respondents have presented no evidence to rebut the
 11 legal presumption that such debt would be a liability of the Simonson and Rehberg marital
 12 communities.

13 Regarding the Rehbergs, the further question arises as to whether their subsequent relocation
 14 to Florida would act as a defense to an order against the Rehbergs’ marital community. Florida is not
 15 a community property state.¹⁶⁸ Under Florida law, “the law of the situs has primary control over
 16 property within its borders.”¹⁶⁹ However, Florida courts have held that community property will
 17 retain its characteristics when brought into the state.¹⁷⁰ While the Rehbergs no longer reside in a

18
 19 B. The community property is liable for the premarital separate debts or other liabilities of a spouse, incurred after
 20 September 1, 1973 but only to the extent of the value of that spouse's contribution to the community property which
 21 would have been such spouse's separate property if single.

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 23 have been community debts if incurred in this state.

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 25 community. In an action on such a debt or obligation the spouses shall be sued jointly and the debt or obligation shall be
 26 satisfied: first, from the community property, and second, from the separate property of the spouse contracting the debt or
 27 obligation.

28 ¹⁶³ *Arab Monetary Fund v. Hashim*, 219 Ariz. 108, 111, 193 P.3d 802, 805 (Ct. App. 2008).

¹⁶⁴ A.R.S. § 25-215(D).

¹⁶⁵ *Hrudka v. Hrudka*, 186 Ariz. 84, 91-92, 919 P.2d 179, 186-87 (Ct. App. 1995).

¹⁶⁶ Tr. at 164-165.

¹⁶⁷ Tr. at 97; Exh. S-3d at 4-5.

¹⁶⁸ *Herrera v. Herrera*, 673 So. 2d 143, 144 (Fla. 5th DCA 1996).

¹⁶⁹ *Quintana v. Ordonez*, 195 So. 2d 577, 579 (Fla. 3d DCA 1967).

¹⁷⁰ *See Republic Credit Corp. I v. Upshaw*, 10 So. 3d 1103, 1104 (Fla. 4th DCA 2009) (Since California does not
 recognize tenancy by the entireties as a form of ownership, proceeds from the sale of California home cannot retain
 characteristics it never had); *see also Quintana v. Ordonez*, 195 So. 2d 577, 579 (Fla. 3d DCA 1967) (adopting the rule set
 forth in Restatement, Conflict of Law § 290 (1934) that the “interests of one spouse in movables acquired by the other
 during the marriage are determined by the law of the domicile of the parties when the movables are acquired”).

community property state, they would still possess community property subject to the debts incurred by the marital community.

Restitution and Administrative Penalties

The Division contends that the Rehberg Respondents should be ordered to pay restitution in the amount of \$1,211,577.31, reflecting the amount of the securities sold prior to the arrest of Mr. Rehberg, less the amount of \$221,000 already repaid to some investors.¹⁷¹ The Division further contends that SEED and the Simonson Respondents should be ordered to pay restitution in the amount of \$1,408,077.31, reflecting the total amount of the SEED securities sold less the amount of \$221,500 already repaid to some investors. The Division also seeks administrative penalties against the Respondents "to address the Respondents' conduct that includes raising in excess of \$1 million, the general solicitation, and multiple material omissions regarding Rehberg's past."¹⁷² The Division recommends an administrative penalty in the amount of \$25,000 to be assessed against SEED and the Simonson Respondents. An administrative penalty in the amount of \$50,000 is requested by the Division against the Rehberg Respondents.

The Commission has the authority to order restitution pursuant to A.R.S. § 44-2032.¹⁷³ The evidence of record establishes that SEED and the Simonson Respondents received a total of \$1,629,577.31 in investments in SEED securities.¹⁷⁴ Of that amount, \$221,500 was returned to investors.¹⁷⁵ SEED and the Simonson Respondents should be liable for restitution on the remaining amount of \$1,408,077.31, plus interest. Prior to the arrest of the Rehberg Respondents,

¹⁷¹ We note the Division's Post Hearing Brief incorrectly states the repayment amount regarding the Rehberg Respondents to be \$221,500. Division Post-Hearing Brief at 16. However, \$500 of the repayment total was made to the SEED Note investor, who invested after the arrest of Mr. Rehberg. In spite of this error, the Division's Post Hearing Brief correctly states the total amount of unpaid restitution at \$1,211,577.31 for the Rehberg Respondents.

¹⁷² Division Post-Hearing Brief at 16-17.

¹⁷³ A.R.S. § 44-2032 provides, in pertinent part:

If it appears to the commission, either on complaint or otherwise, that any person has engaged in, is engaging in or is about to engage in any act, practice or transaction that constitutes a violation of this chapter, or any rule or order of the commission under this chapter, the commission, in its discretion may:

1. Issue an order directing such person to cease and desist from engaging in the act, practice or transaction, or doing any other act in furtherance of the act, practice or transaction, and to take appropriate affirmative action within a reasonable period of time, as prescribed by the commission, to correct the conditions resulting from the act, practice or transaction including, without limitation, a requirement to provide restitution as prescribed by rules of the commission. ...

See also A.A.C. R14-4-308.

¹⁷⁴ Exh. S-80b.

¹⁷⁵ *Id.*

1 \$1,432,577.31 had been raised from the sale of SEED securities.¹⁷⁶ Deducting \$221,000 previously
 2 paid to investors leaves a total of \$1,211,577.31, plus interest, in restitution for which the Rehberg
 3 Respondents should be liable.¹⁷⁷

4 Under A.R.S. § 44-2036(A), the Commission has authority to assess an administrative penalty
 5 of no more than \$5,000 for each violation committed.¹⁷⁸ The record establishes that a total of forty-
 6 eight investors purchased stock in SEED with one additional investor purchasing a note.¹⁷⁹ Forty-
 7 four of those investors purchased while Mr. Rehberg was involved in the sale of SEED stock.¹⁸⁰
 8 Based on the number of investments, the Commission could assess administrative penalties against
 9 each Respondent in excess of \$200,000. We find the Division's recommendation of an
 10 administrative penalty in the amount of \$50,000 against the Rehberg Respondents to be appropriate
 11 based upon the evidence of record.

12 The Division requests a lesser administrative penalty of \$25,000 against SEED and the
 13 Simonson Respondents. The Division does not state its reasoning for requesting a lesser penalty
 14 against SEED and the Simonson Respondents than the penalty sought against the Rehberg
 15 Respondents. The record establishes that Mr. Rehberg, under the alias Shawn Pierce, played the
 16 primary role in acquiring investors for SEED, including drafting the subscription agreement that was
 17 given to those investors.¹⁸¹ Mr. Rehberg hid his true identity from both the SEED investors and Mr.
 18 Simonson.¹⁸² Upon discovery of Mr. Rehberg's true identity, Mr. Simonson sought the advice of
 19 counsel, disclosed the information of Mr. Rehberg's history to investors, and offered rescission to
 20 investors in a Private Placement Memorandum prepared by counsel.¹⁸³ Comparing the relative
 21 culpability of Mr. Simonson to that of Mr. Rehberg, we conclude a significantly lesser administrative
 22 penalty would be appropriate for the Simonson Respondents. Accordingly, an administrative penalty

23 ¹⁷⁶ Exh. S-80a.

24 ¹⁷⁷ *Id.*

25 ¹⁷⁸ A.R.S. § 44-2036 provides, in pertinent part:

26 A. A person who, in an administrative action, is found to have violated any provision of this chapter or any rule or order
 of the commission may be assessed an administrative penalty by the commission, after a hearing, in an amount of not to
 exceed five thousand dollars for each violation.

27 ¹⁷⁹ Exhs. S-20, S-29-S-47, S-49, S-51, S-53-S-55, S-58-S-64, S-67, S-68, S-71-S-74, S-76-S-79, S-80b, S-85.

28 ¹⁸⁰ Exh. S-80a.

¹⁸¹ Tr. at 138, 143, 174-177; Exh. S-5 at 21-22, 35, 45.

¹⁸² Tr. at 50, 102, 158, 168-169; Exhs. S-3a, S-3b at 20, S-5 at 35-36, S-15 at ACC002105.

¹⁸³ Exhs. S-5 at 18, 37-38, S-9, S-15.

1 of \$5,000 shall be assessed against SEED and the Simonson Respondents.

2 * * * * *

3 Having considered the entire record herein and being fully advised in the premises, the
4 Commission finds, concludes, and orders that:

5 **FINDINGS OF FACT**

6 1. Randall Duane Simonson is a married person who, at all relevant times herein, was a
7 resident of Arizona.¹⁸⁴

8 2. SEED was an Arizona Corporation incorporated on April 18, 2007. SEED was
9 administratively dissolved on October 23, 2009. Randall Simonson served as President and CEO of
10 SEED.¹⁸⁵

11 3. SEED has not been registered as a securities dealer with the Commission.¹⁸⁶

12 4. Marilyn J. Simonson was at all relevant times the spouse of Randall Simonson.¹⁸⁷

13 5. Mr. Simonson has not been registered as a securities dealer or salesman with the
14 Commission.¹⁸⁸

15 6. Karl Henry Rehberg, aka Shawn Pierce, is a married person who was a resident of
16 Arizona for all relevant times herein, until after his arrest on or about August 17, 2007.¹⁸⁹

17 7. Helen Rehberg, aka Lisa Pierce, was at all relevant times herein the spouse of Karl
18 Rehberg.¹⁹⁰

19 8. Mr. Rehberg has not been registered as a securities dealer or salesman with the
20 Commission.¹⁹¹

21 9. At all times relevant, Mr. Simonson and Mr. Rehberg were acting for their own benefit
22 and for the benefit or in furtherance of their marital communities with their respective Respondent
23 Spouse.¹⁹²

24 ¹⁸⁴ Tr. at 164; Exh. S-5 at 8.

25 ¹⁸⁵ Tr. at 99-100, 129; Exhs. S-2, S-5 at 13.

26 ¹⁸⁶ Tr. at 97-98; Exh. S-1a.

27 ¹⁸⁷ Tr. at 164-165; Exh. S-5 at 8.

28 ¹⁸⁸ Tr. at 98; Exhs. S-1b, S-5 at 11.

¹⁸⁹ Tr. at 103, 158, 169; Exh. S-3b at 20.

¹⁹⁰ Tr. at 97; Exh. S-3d at 4-5.

¹⁹¹ Tr. at 98; Exh. S-1c.

¹⁹² Tr. at 115-116; Exh. S-5 at 17, 24, 48.

1 10. Mr. Simonson incorporated SEED to finance and develop an energy efficient
2 document and self-storage facility.¹⁹³

3 11. SEED purchased a plot of land in Mesa, Arizona, with the intention of constructing a
4 self-sustaining record storage facility (the "Fiesta Mesa Facility"). The land was purchased with
5 approximately \$650,000 cash and \$550,000 in mortgage debt.¹⁹⁴

6 12. SEED opened a business office in Mesa, Arizona. SEED invested in green technology
7 and RFID technology that it planned to use at the Fiesta Mesa Facility.¹⁹⁵

8 13. SEED also incurred expenses for professional services including appraisals, a tax
9 evaluation, and attorney fees.¹⁹⁶

10 14. Construction of the Fiesta Mesa Facility was projected to cost between approximately
11 \$7.4 million to \$16 million.¹⁹⁷

12 15. SEED raised approximately \$1.629 million from the sale of stock and \$20,000 through
13 the sale of a note.¹⁹⁸

14 16. SEED sought a business loan to provide additional funding for construction of the
15 Fiesta Mesa Facility, but SEED was unable to obtain a loan.¹⁹⁹

16 17. After SEED failed to make payments, the parcel of land in Mesa was returned to the
17 seller.²⁰⁰

18 18. Between June 2007 and September 5, 2007 (the "First Offering"), the Respondents
19 sold approximately 538,000 shares of SEED Corporation Class A common stock to approximately 44
20 investors for a total investment of approximately \$1.4 million.²⁰¹

21 19. Investors were provided a document titled "SEED Corporation Subscription
22 Agreement" (the "Subscription Agreement").²⁰²

23
24 ¹⁹³ Tr. at 129; Exh. S-10 at ACC002066.

¹⁹⁴ Tr. at 147; Exh. S-5 at 25-27.

¹⁹⁵ Tr. at 133, 148-150, 155.

¹⁹⁶ Tr. at 147, 150-151, 156.

¹⁹⁷ Exhs. S-5 at 33, S-10 at ACC002069, S-15 at ACC002101, S-16 at ACC002023.

¹⁹⁸ Exh. S-80b.

¹⁹⁹ Tr. at 148, 151-152; Exh. S-5 at 30, 34.

²⁰⁰ Tr. at 163-164.

²⁰¹ Tr. at 113; Exh. S-15 at ACC002090, Exh. 80a.

²⁰² Tr. at 104, 175; Exhs. S-20, S-29-S-47, S-49, S-51, S-53-S-55, S-58-S-64, S-67, S-68, S-71-S-74, S-76-S-79.

20. The Subscription Agreements in the First Offering bore a footnote which read:
 “Copyright 2007 S. Pierce, All Rights Reserved. Confidential PPM – Unauthorized Use or
 Reproduction is Prohibited.”²⁰³

21. “S. Pierce” referred to Shawn Pierce, the alias used by Mr. Rehberg.²⁰⁴

22. In spite of the “Confidential PPM” footnote, the Subscription Agreement stated that it
 was being provided without a SEED Corporation Private Placement Memorandum.²⁰⁵

23. The Subscription Agreement was accompanied by an investor suitability
 questionnaire.²⁰⁶

24. Twelve investors purchased SEED stock without indicating that they were accredited
 investors on the suitability questionnaire.²⁰⁷

25. Under the name of Shawn Pierce, Mr. Rehberg worked as a consultant to SEED and
 contacted potential investors.²⁰⁸

26. Other investors heard about SEED through word of mouth and attended investment
 presentations online or at SEED’s offices.²⁰⁹

27. In an Executive Summary provided to investors, Shawn Pierce was identified as a
 consultant acting as liaison between SEED and its affiliates. Shawn Pierce is further credited with
 “making this project possible and further develop[ing] the concept and financial structure for
 SEED.”²¹⁰

28. Shawn Pierce was arrested by the Mesa Police Department on or about August 17,
 2007, and his true identity as Karl Rehberg was discovered by the police soon thereafter.²¹¹

29. Unknown to SEED investors and Mr. Simonson prior to Mr. Rehberg’s arrest, Shawn

²⁰³ Tr. at 53; Exhs. S-20, S-29-S-47, S-49, S-51, S-53-S-55, S-58-S-64, S-67, S-68, S-71-S-74, S-76-S-79.

²⁰⁴ Tr. at 102, 175-176; Exh. S-15 at ACC002105.

²⁰⁵ Exh. S-20 at ACC002175; *See also* Exhs. S-29-S-47, S-49, S-51, S-53-S-55, S-58-S-64, S-67, S-68, S-71-S-74, S-76-S-79.

²⁰⁶ Exh. S-20 at ACC002181; *See also* Exhs. S-29-S-47, S-49, S-51, S-53-S-55, S-58-S-64, S-67, S-68, S-71-S-74, S-76-S-79.

²⁰⁷ Exhs. S-36, S-39, S-40, S-41, S-43, S-45, S-46, S-60, S-67, S-72, S-76, S-79.

²⁰⁸ Tr. at 143, 178; Exhs. S-5 at 17, 21-22, 35, 38, 45, S-9, S-10 at ACC002064, S-15 at ACC002105.

²⁰⁹ Tr. at 44; Exh. S-5 at 22.

²¹⁰ Exh. S-10 at ACC002064.

²¹¹ Tr. at 124, 168-169; Exhs. S-3b at 20, S-5 at 18.

1 Pierce was an alias used by Respondent Karl Rehberg.²¹²

2 30. Unknown to SEED investors and Mr. Simonson prior to Mr. Rehberg's arrest,
3 Respondent Karl Rehberg had fled prosecution in Florida in September 1998 regarding fraud in
4 connection with the sale of \$21 million in unregistered securities.²¹³

5 31. Unknown to SEED investors and Mr. Simonson prior to Mr. Rehberg's arrest, a
6 criminal warrant was issued for Mr. Rehberg's arrest in December 1998.²¹⁴

7 32. Following their arrest, Mr. Rehberg and his wife pled guilty to criminal charges and
8 were sentenced to prison by the U.S. District Court for the Middle District of Florida.²¹⁵

9 33. Mr. Simonson discovered Mr. Rehberg's true identity and background following his
10 arrest.²¹⁶

11 34. Mr. Simonson obtained legal counsel to determine the business consequences to
12 SEED resulting from Mr. Rehberg's deception and involvement with the company.²¹⁷

13 35. In a September 24, 2007 letter to SEED stockholders, Mr. Simonson disclosed Shawn
14 Pierce's true identity as the fugitive Karl Rehberg.²¹⁸ The letter further stated that Mr. Rehberg was
15 "no longer affiliated with SEED Corporation."²¹⁹

16 36. Simonson also stated in the September 24, 2007 letter that after obtaining legal
17 counsel, SEED "discovered that our private placement offering earlier this summer did not meet
18 federal or state securities law guidelines due to, among other things, inadequate disclosure and
19 documentation."²²⁰

20 37. At the time of the letter, 44 investors had already purchased shares in SEED totaling
21 approximately \$1.432 million.²²¹

22 38. On October 30, 2007, Mr. Simonson and SEED issued a Private Placement
23

24 ²¹² Tr. at 50, 102, 158, 168-169; Exhs. S-3a, S-3b at 20, S-5 at 35-36, S-15 at ACC002105.

25 ²¹³ Tr. at 50, 102, 168-169; Exhs. S-3a, S-5 at 42, S-15 at ACC002105.

26 ²¹⁴ Tr. at 50, 168-169; Exhs. S-3b at 20, S-15 at ACC002105.

27 ²¹⁵ Tr. at 100-101; Exhs. S-3b, S-3c.

28 ²¹⁶ Exh. S-5 at 42.

²¹⁷ Exh. S-5 at 18, 37-38.

²¹⁸ Tr. at 48-49; Exh. S-9.

²¹⁹ Exh. S-9 at ACC002084.

²²⁰ Tr. at 48-49; Exh. S-9.

²²¹ Exh. S-80a.

1 Memorandum (the "October PPM") to its existing investors offering them rescission of their purchase
2 of SEED stock.²²²

3 39. The October PPM stated that "[n]ot later than December 31, 2007, the Company will
4 forward to Investors stock certificates (and warrants, if applicable) or rescission proceeds, as the case
5 may be ... " noting however, that "some delay" might result "if a significant number of Investors
6 seek rescission."²²³

7 40. Approximately nineteen total investors requested partial or total rescission.²²⁴ Only
8 four received refunds totaling \$221,000.²²⁵

9 41. On November 12, 2007, a Private Placement Memorandum was issued for the purpose
10 of raising funds, offering up to \$5 million in Class A Common Stock of SEED (the "November
11 Offer").²²⁶ The November Offer was made to existing SEED shareholders approximately 80 days
12 after the most recent sale pursuant to the First Offering.²²⁷

13 42. An additional four investors purchased approximately \$177,000 of SEED stock
14 subsequent to Mr. Rehberg's involvement with SEED.²²⁸

15 43. On or about September 28, 2008, Simonson caused SEED to execute a 2 Year SEED
16 Corporation Promissory Note (the "SEED Note") with a principal amount of \$20,000 to an Arizona
17 resident (the "Note Investor").²²⁹ Mr. Simonson had no prior relationship with the Note Investor
18 before being introduced through a friend of a mutual friend.²³⁰

19 44. Mr. Simonson personally met the Note Investor in Benson, Arizona, on or about
20 September 28, 2008, for the purposes of discussing an investment in SEED.²³¹ Mr. Simonson did not
21 inquire about the Note Investor's net worth or financial position.²³²

22 45. The unsecured SEED Note guaranteed repayment in quarterly installments of \$500

23 ²²² Tr. at 169-170; Exh. S-15.

24 ²²³ Exh. S-15 at ACC002096.

²²⁴ Tr. at 61-64, 74, 83; Exhs. S-23, S-24, S-29-S-32, S-35, S-36, S-39, S-40, S-43-S-47, S-53, S-54, S-77-S-79.

25 ²²⁵ Tr. at 61-64, 74, 83; Exhs. S-16 at ACC002041, S-80.

²²⁶ Exh. S-16.

26 ²²⁷ Exhs. S-16, S-80.

²²⁸ Tr. at 111, 160-161; Exh. S-80.

27 ²²⁹ Tr. at 86, 89-90, 159; Exh. S-85.

²³⁰ Tr. at 87-88, 153; Exh. S-5 at 39, 52, 56.

28 ²³¹ Tr. at 87-88, 153-154; Exh. S-5 at 39.

²³² Tr. at 89; Exh. S-5 at 57-58.

1 commencing January 2009.²³³ SEED made only one \$500 payment on the SEED Note.²³⁴

2 46. At no relevant time did SEED register the SEED Note with the Commission.²³⁵

3 **CONCLUSIONS OF LAW**

4 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
5 Arizona Constitution and the Securities Act of Arizona, A.R.S. § 44-1801, *et. seq.*

6 2. The findings and conclusions of law contained in the Discussion above are
7 incorporated herein.

8 3. Respondents SEED, Randall Duane Simonson and Karl Henry Rehberg offered or
9 sold securities, within the meaning of A.R.S. § 44-1801.

10 4. Respondents SEED, Randall Duane Simonson and Karl Henry Rehberg violated
11 A.R.S. § 44-1841 by offering or selling securities that were neither registered nor exempt from
12 registration.

13 5. Respondents SEED, Randall Duane Simonson and Karl Henry Rehberg violated
14 A.R.S. § 44-1842 by offering or selling securities while not being registered as dealers or salesmen.

15 6. Respondents SEED, Randall Duane Simonson and Karl Henry Rehberg committed
16 fraud in the offer and sale of securities in violation of A.R.S. § 44-1991 in the manner set forth
17 hereinabove.

18 7. The Respondents failed to meet their burden of proof pursuant to A.R.S. § 40-2033 to
19 establish that the securities offered and sold herein were exempt from regulation under the Act.

20 8. Respondents SEED's, Randall Duane Simonson's and Karl Henry Rehberg's conduct
21 is grounds for a cease and desist order pursuant to A.R.S. § 44-2032, and from any future violations
22 of the Act.

23 9. Respondents SEED's, Randall Duane Simonson's and Karl Henry Rehberg's conduct
24 is grounds for an order of restitution pursuant to A.R.S. § 44-2032 and A.A.C. R-14-4-308, and for
25 which the respective marital communities should be jointly and severally liable subject to the
26 limitations of A.R.S. § 25-215.

27 ²³³ Tr. at 89-90; Exhs. S-5 at 53, 58, S-85.

28 ²³⁴ Tr. at 92; Exh. S-5 at 53.

²³⁵ Exh. S-1a.

10. An administrative penalty should be ordered against SEED Corporation, Randall Duane Simonson, and the marital community of Randall Duane Simonson and Marilyn J. Simonson, jointly and severally, for their multiple violations of the Act, pursuant to A.R.S. § 44-2036 and subject to the limitations of A.R.S. § 25-215.

11. An administrative penalty should be ordered against Karl Henry Rehberg, and the marital community of Karl Henry Rehberg and Helen Rehberg, jointly and severally, for Mr. Rehberg's multiple violations of the Act, pursuant to A.R.S. § 44-2036 and subject to the limitations of A.R.S. § 25-215.

ORDER

IT IS THEREFORE ORDERED that pursuant to the authority granted to the Commission under A.R.S. § 44-2032, Respondents SEED Corporation, Randall Duane Simonson, and Karl Henry Rehberg, shall cease and desist from their actions, as described above, in violation of A.R.S. §§ 44-1841, 44-1842 and 44-1991.

IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under A.R.S. § 44-2032, Respondents SEED Corporation, Randall Duane Simonson, individually, and, to the extent allowable pursuant to A.R.S. § 25-215, the marital community of Randall Duane Simonson and Marilyn J. Simonson, jointly and severally, shall make restitution in the amount of \$1,408,077.31, payable to the Arizona Corporation Commission within 90 days of the effective date of this Decision. Such restitution shall be made pursuant to A.A.C. R14-4-308 subject to legal setoffs by the Respondents and confirmed by the Director of Securities.

IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under A.R.S. § 44-2032, Respondents Karl Henry Rehberg, individually, and, to the extent allowable pursuant to A.R.S. § 25-215, the marital community of Karl Henry Rehberg and Helen Rehberg, jointly and severally, shall make restitution in the amount of \$1,211,577.31, payable to the Arizona Corporation Commission within 90 days of the effective date of this Decision. Such restitution shall be made pursuant to A.A.C. R14-4-308 subject to legal setoffs by the Respondents and confirmed by the Director of Securities.

...

1 IT IS FURTHER ORDERED that all ordered restitution payments shall be deposited into an
2 interest-bearing account(s), if appropriate, until distributions are made.

3 IT IS FURTHER ORDERED that the ordered restitution shall bear interest at the rate of the
4 lesser of 10 percent *per annum*, or at a rate *per annum* that is equal to one percent plus the prime rate
5 as published by the Board of Governors of the Federal Reserve System of Statistical Release H.15, or
6 any publication that may supersede it on the date that the judgment is entered.

7 IT IS FURTHER ORDERED that the Commission shall disburse the restitution funds on a
8 *pro rata* basis to the investors shown on the records of the Commission. Any restitution funds that
9 the Commission cannot disburse because an investor refuses to accept such payment, or any
10 restitution funds that cannot be disbursed to an investor because the investor is deceased and the
11 Commission cannot reasonably identify and locate the deceased investor's spouse or natural children
12 surviving at the time of distribution, shall be disbursed on a *pro rata* basis to the remaining investors
13 shown on the records of the Commission. Any funds that the Commission determines it is unable to
14 or cannot feasibly disburse shall be transferred to the general fund of the State of Arizona.

15 IT IS FURTHER ORDERED that Respondents SEED Corporation, Randall Duane Simonson,
16 individually, and the marital community of Randall Duane Simonson and Marilyn J. Simonson,
17 jointly and severally, shall pay to the State of Arizona administrative penalties in the amount of
18 \$5,000 for SEED Corporation's and Mr. Simonson's multiple violations of the registration and
19 antifraud provisions of the Securities Act, pursuant to A.R.S. §§ 44-2036 and 25-215. Said
20 administrative penalties shall be payable by either cashier's check or money order payable to "the
21 State of Arizona" and presented to the Arizona Corporation Commission for deposit in the general
22 fund for the State of Arizona.

23 IT IS FURTHER ORDERED that Respondent Karl Henry Rehberg, individually, and the
24 marital community of Karl Henry Rehberg and Helen Rehberg, jointly and severally, shall pay to the
25 State of Arizona administrative penalties in the amount of \$50,000 for Mr. Rehberg's multiple
26 violations of the registration and antifraud provisions of the Securities Act, pursuant to A.R.S. §§ 44-
27 2036 and 25-215. Said administrative penalties shall be payable by either cashier's check or money
28 order payable to "the State of Arizona" and presented to the Arizona Corporation Commission for

1 deposit in the general fund for the State of Arizona.

2 IT IS FURTHER ORDERED that the payment obligations for these administrative penalties
3 shall be subordinate to the restitution obligations ordered herein and shall become immediately due
4 and payable only after restitution payments have been paid in full or upon Respondents' default with
5 respect to Respondents' restitution obligations.

6 IT IS FURTHER ORDERED that if Respondents fail to pay the administrative penalties
7 ordered hereinabove, any outstanding balance plus interest, at the rate of the lesser of ten percent *per*
8 *annum* or at a rate *per annum* that is equal to one percent plus the prime rate as published by the
9 Board of Governors of the Federal Reserve System in Statistical Release H.15 or any publication that
10 may supersede it on the date that the judgment is entered, may be deemed in default and shall be
11 immediately due and payable, without further notice.

12 IT IS FURTHER ORDERED that if any of the Respondents fail to comply with this Order,
13 any outstanding balance shall be in default and shall be immediately due and payable without notice
14 or demand. The acceptance of any partial or late payment by the Commission is not a waiver of
15 default by the Commission.

16 IT IS FURTHER ORDERED that default shall render Respondents liable to the Commission
17 for its cost of collection and interest at the maximum legal rate.

18 IT IS FURTHER ORDERED that if any of the Respondents fail to comply with this Order,
19 the Commission may bring further legal proceedings against the Respondent(s) including application
20 to the Superior Court for an order of contempt.

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1 IT IS FURTHER ORDERED that pursuant to A.R.S. § 44-1974, upon application the
 2 Commission may grant a rehearing of this Order. The application must be received by the
 3 Commission at its offices within twenty (20) calendar days after entry of this Order. Unless otherwise
 4 ordered, filing an application for rehearing does not stay this Order. If the Commission does not grant
 5 a rehearing within twenty (20) calendar days after filing the application, the application is considered
 6 to be denied. No additional notice will be given of such denial.

7 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

8 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

9
10
11 CHAIRMAN

COMMISSIONER

12
13 COMMISSIONER

COMMISSIONER

COMMISSIONER

14
15 IN WITNESS WHEREOF, I, JODI JERICH, Executive
 16 Director of the Arizona Corporation Commission, have
 17 hereunto set my hand and caused the official seal of the
 18 Commission to be affixed at the Capitol, in the City of Phoenix,
 19 this _____ day of _____ 2014.

20 JODI JERICH
 21 EXECUTIVE DIRECTOR

22 DISSENT _____

23 DISSENT _____

24 MP:ru
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1 SERVICE LIST FOR:

SEED CORPORATION, RANDALL DUANE
SIMONSON AND MARILYN J. SIMONSON,
2 HUSBAND AND WIFE, AND KARL HENRY
3 REHBERG AKA SHAWN PIERCE AND HELEN
4 REHBERG AKA LISA PIERCE, HUSBAND AND
WIFE.

5 DOCKET NO.:

S-20844A-12-0122

6 Randall Duane Simonson
Marilyn J. Simonson
7 SEED CORPORATION
10239 East Happy Valley Road
8 Scottsdale, AZ 85255-2326

9 Karl Henry Rehberg
Helen Rehberg
10 7848 Sonoma Springs Circle, Apt. 108
Lake Worth, FL 33463-7939

11 Matt Neubert, Director
12 Securities Division
ARIZONA CORPORATION COMMISSION
13 1300 West Washington Street
14 Phoenix, AZ 85007

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